

1 J. Noah Hagey, Esq. (SBN: 262331)
2 hagey@braunhagey.com
3 Matthew Borden, Esq. (SBN: 214323)
4 borden@braunhagey.com
5 Forrest Hainline, Esq. (SBN: 64166)
6 hainline@braunhagey.com
7 David H. Kwasniewski, Esq. (SBN: 281985)
8 kwasniewski@braunhagey.com
9 Robert Petraglia (SBN: 264849)
10 petraglia@braunhagey.com
11 BRAUNHAGEY & BORDEN LLP
12 351 California Street, 10th Floor
13 San Francisco, CA 94104
14 Telephone: (415) 599-0210
15 Facsimile: (415) 276-1808
16 ATTORNEYS FOR PLAINTIFF
17 B&G FOODS NORTH AMERICA, INC.

CRAIG M. NICHOLAS (Bar No. 178444)
cnicholas@nicholaslaw.org
SHAUN MARKLEY (Bar No. 245598)
smarkley@nicholaslaw.org
JAKE W. SCHULTE (Bar No. 293777)
jschulte@nicholaslaw.org
NICHOLAS & TOMASEVIC, LLP 225
Broadway, 19th Floor
San Diego, California 92101
(619) 325-0492 (Tel)
(619) 325-0496 (Fax)

NOAM GLICK (Bar No. 251582)
noam@glicklawgroup.com
GLICK LAW GROUP, P.C.
225 Broadway, Suite 2100
San Diego, CA 92101
Tel: (619) 382-3400
Fax: (619) 615-2193
Attorneys for Defendants
KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

15 B&G FOOD NORTH AMERICA, INC.,
16 Plaintiff,
17 v.
18 KIM EMBRY and ENVIRONMENTAL
19 HEALTH ADVOCATES, INC., acting as
20 enforcement representatives under California
21 Proposition 65 on behalf of the State of
22 California,
23 Defendants.

Case No. 2:20-cv-00526-KJM-DB
STIPULATED ESI PROTOCOL

Judge: Hon. Kimberly J. Mueller

1 **I. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this case
3 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **II. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **III. LIAISON**

10 The parties have identified liaisons to each other who are and will be knowledgeable
11 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or
12 have access to those who are, knowledgeable about the technical aspects of e-discovery,
13 including the location, nature, accessibility, format, collection, search methodologies, and
14 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about
15 ESI and to help resolve disputes without court intervention.

16 **IV. PRESERVATION**

17 The parties have discussed their preservation obligations and needs and agree that
18 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs
19 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 20 a) Only ESI created or received between April 2018 and until the resolution of this
21 matter will be preserved;
22 b) The parties will exchanged a list of the types of ESI they believe should be
23 preserved and the custodians, or general job titles or descriptions of custodians, for whom
24 they believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing
25 manager.” The parties shall add or remove custodians as reasonably necessary;
26 c) The parties have agreed/will agree on the number of custodians per party for whom
27 ESI will be preserved.

28 **V. SEARCH**

 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is

subject to production in discovery and filter out ESI that is not subject to discovery.

VI. PRODUCTION FORMATS

The parties agree to produce documents in ☐ PDF and/or ☒ native or a combination thereof file formats. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

VII. DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

VIII. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: July 11, 2023

/s/ David Kwasniewski

Attorney for Plaintiffs

DATED: July 11, 2023

/s/ Jake W. Schulte

Attorney for Defendants

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

DATED: July 17, 2023

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE